IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 59 of 2004
WITH
COMPAY PETITION No.24 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B.I.F.R. - Petitioner(s)
Versus
C.M.D., ABIR CHEMICALS LTD. & 8 - Respondent(s)

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Appearance :
BOARD OPINION for Petitioner(s) : 1,
MR NAVIN K PAHWA for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR PRANAV G DESAI for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4 - 5, 7,
NOTICE NOT RECD BACK for Respondent(s) : 6,
MR RA MISHRA for Respondent(s) : 8,
MR MANOJ N POPAT for Respondent(s) : 8,
SERVED BY AFFIX.(N) for Respondent(s) : 9,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/12/2006

ORAL JUDGMENT

1. Company Petition No.59 of 2004 arises from the

opinion dated 24th March, 2004 forwarded by the board of industrial and financial rehabilitation in a case no.175 of 2001 passed on meetings of the proceedings dated 16th March,2004 before the B.I.F.R. The B.I.F.R. has recommended that it would be just and equitable and in public interest if the sick company i.e. Abir Chemicals Ltd. be wound up in terms of Section 20(1) of the Act and accordingly the said opinion was forwarded to this Court which is registered as Company Petition No.59 of 2004. Company Petition No.24 of 2001 is filed by one of the creditors for winding up the respondent company i.e. M/s. Abir Chemicals Ltd.

2. Initially, notice was ordered to be issued by this Court and subsequently by order dated 05.07.2004 this Court admitted the present company petition and Official Liquidator attached to this Court was appointed as Provisional Liquidator of the company and was also directed to take over the charge of all the assets of the company. The Official Liquidator was further directed to give an advertisement of admission

and final hearing of company petition no.59 of 2004 in two newspapers and publication of notice in official gazette was dispensed with. It appears that against the order of the B.I.F.R. passed in case no.175 of 2001, the Company preferred appeal before the A.A.I.F.R. being appeal no.125 of 2004, and, therefore, company application no.308 of 2004 in Company Petition 59 of 2004 was filed by the respondent company for review and recalling the orders dated 05.07.2004 and 11.08.2004 and the learned Single Judge of this Court vide order dated 25.11.2004 disposed of the said application recalling the order with regard to appointment of the Official Liquidator as Provisional Liquidator and directions given to the Official Liquidator to take possession of the property of the company, however, the order of admission and advertisement of the petition was not recalled. This Court directed to notify the company petition no.59 of 2004 for final hearing after the appeal no.125 of 2004 is decided by A.A.I.F.R. It is reported that by order dated 11.07.2006 the A.A.I.F.R. has dismissed the appeal 125 of 2004. Thus, there is no impediment

in proceeding further with this Company Petition and these are required to be decided on merits. It also appears that advertisement of admission and final hearing of this company petition was published in two newspapers one in Gujarati daily i.e. “Jansatta” and English Daily “Indian Express”, both in Ahmedabad editions. This court has not received any objection against the present company petition. The respondent company has also not come out with the case that they are profit making company and/or they are in a position to make the payment to their creditors. They also have not come out with concrete proposal to make the payment.

3. Having perused the opinion of the B.I.F.R. and having heard the learned advocates appearing on behalf of the respective parties, it appears to this Court that the B.I.F.R. had already given opportunity to the company for revival and the respondent company was declared as sick industrial company in terms of section 3(1) (o) of the said Act and I.C.I.C.I. was appointed as the operating agency under Section 17(b) of the

SICA Act to examine the viability of the Company and also issue advertisement for change in management. It appears from the proceedings before the B.I.F.R. that company had submitted rehabilitation proposal based on one time settlement of dues of the secured creditors and induction of the Co-promoters. At the hearing, the B.I.F.R. noted that barring I.C.I.C.I. Bank no secured creditor was agreeable to the proposal and thereafter bench came to the conclusion that despite having allowed enough time and opportunity given to the company and all other concerned, it had not possible to formulate any acceptable revival scheme for the company that would enable it to make its worth except the accumulated losses within a reasonable time while meeting and/or its due financial obligation and the company at the result thereof was not likely to follow in future. Thus, the bench formed the opinion that it was just equitable public interest that the company be wound up and accordingly show cause notice was issued to concerned and thereafter the impugned order came to be passed and the opinion that the respondent

company be wound up was forwarded to this Court.

4. In view of the above opinion, the respondent company is required to be ordered to be wound up.

5. No affidavit is filed on behalf of respondent no.1. The Court, therefore, proceeds on the basis of findings given by the B.I.F.R. which are already quoted hereinabove.

6. In view of the aforesaid uncontroverted findings, this Court accepts the opinion of the B.I.F.R. and therefore passes the following orders.

7. Both the Company Petitions are allowed in view of the opinion of B.I.F.R. rendered in case no.175 of 2001 hearing on 16th March, 2004. M/s Abir Chemicals Ltd. is ordered to be wound up in accordance with the provisions of Companies Act, 1956. The Official Liquidator is hereby asked to take possession of the properties (movable and immovable) of the respondent company immediately alongwith its bank accounts, cash and accounts books etc. after performing inventory. The

Official Liquidator shall submit his report within period of three months. If require, he can take services of the office valuers for the purpose of preparation of possession note and other inventory etc.

8. These petitions are accordingly disposed of. There shall be no order as to costs.

(M.R.SHAH, J.)

Amit/-